IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.4907/2002
M/s S.G.STEELS & ALLOYS PRIVATE LIMITED
V/s
THE STATE OF RAJASTHAN & AOTHER

DATE OF ORDER : 13th MARCH 2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri D.K. Bhardwaj for the petitioner.
Shri B.S. Chhaba, Dy. Government Advocate.

REPORTABLE

The petitioner company has, by filing the present writ petition, prayed for quashment of the order dated 5.3.2002 and the order dated 22.3.2002 and also for a writ of mandamus directing the respondents to grant to it benefit or subsidy under the State Capital Investment Scheme of 1990.

Factual matrix of the case is that the petitioner company set up a project costing about Rs.80 lacs. It invested 25% amount in the sum of Rs.25,78,000/- and got its industry registered with the District Industries Centre Alwar on 29.4.98. It has started production on 29.9.98. The petitioner applied for grant of subsidy under the Scheme of 1990 on 26.12.1998. Case of the petitioner was considered in the meeting of District Level Committee held on 5.8.1999 and was recommended favourably to the Director of Industries. When the petitioner was not extended the benefit of subsidy, it made a representation on 16.12.2000 and another representation on 5.3.2002. In the representation dated 5.3.2002 it was submitted that the newly added proviso to clause-4(h) introduced by circular dated 3.2.98 should be applied to the case of the petitioner. Though as per the above clause production was to be started on or before 30.9.98 but the petitioner actually started production on 29.9.98. The petitioner gave

illustrations of as many as five such industries whose date of production was respectively, 15th, 25th, 28th, 29th and 30th of September 1998 and yet the amount of subsidy has been sanctioned to them.

Shri D.K. Bhardwaj, learned counsel for the petitioner submits that the case of the petitioner has wrongly been rejected by the respondents in the meeting of DLC chaired by District Collector held on 5.3.2002. In doing so, the respondents have misconstrued the newly added proviso to clause 4(h). The petitioner fulfills all the requirements under the Scheme of 1990. The petitioner had started the commercial production on 29.11.98. It was, therefore, entitled to subsidy because it had acting on the assurance given by the respondents invested huge money and the cost of production by borrowing money from various financial resources.

On the other hand, Shri B.S. Chhaba, the learned Dy. Government Advocate opposed the writ petition and argued

that the petitioner did not commence the commercial production within the period of six months from the date the Scheme was closed. The scheme was closed on 31.7.1998 and the petitioner was expected to commence the commercial production by 30.9.1998 but the petitioner actually commenced the production on 29.11.1998. It is wrong to say that there is no provision in clause 4(h) of the Scheme for adding 61 days after the raw material is put for the first time in production for calculating the period of commencement of commercial production. As regards the arguments of discrimination the respondents have clarified that the recovery proceedings have been initiated for recovery of the amount disputed to five industries named in the writ petition, disbursement of subsidy in their case was made in violation of clause 4(h), supra. The claim of the petitioner has been rightly rejected as it could not be allowed the benefit of subsidy as per Law.

I have heard the learned counsel for the parties and

perused the material on record.

A perusal of the minutes of the meeting of the District Level Committee held on 5.3.2002, reveals that stand of the petitioner before the Committee was that the provisions of the old proviso to clause 4(h), supra, were not applicable to it because the newly added proviso to clause 4(h) of the scheme of 1990 requires the unit to make only 25% of the proposed investment upto 31.3.1998 and start production upto 30.9.1998. Further stand of the petitioner is since they have actually started the production on 29.9.98 and, therefore, the original proviso to clause 4(h) having been substituted by new one, there was no basis for adding further 61 days. The DLC however held that as per the rules, the petitioner should have started commercial production upto 29.11.98 but by adding 61 days as per the provisions of the original Scheme, and therefore it was not entitled to grant of exemption.

In order to appreciate the correctness of the view taken by the DLC, it would be appropriate to extract not only the original clause 4(h) which also includes later part of it which was replaced by new proviso but also the newly added proviso to clause 4(h) by notification dated 3.2.98 which are reproduced as under :

> 4(h) "New Industrial Units" means an industrial unit set up during the operative period of this scheme. The Industrial unit will be deemed to have been set up during the operative period of the scheme, if it commences commercial production on or after 1.4.1990 and is found eligible under this scheme. Date of commencement of the commercial production will be the 61st day after the day on which the raw material is, for the first time put in the process of production including trial production."
>
> (underlining mine)

Newly added proviso :

> "However an eligible industrial unit making investment of at least 25% of the project cost before the closing date of the scheme and starting commercial production within a period of 6 months after the closing date of the scheme would also be a new industrial unit for the purpose of scheme and would

> be entitled for capital investment subsidy as per the provisions of the scheme. Provided such eligible industrial units are registered themselves with the proof of investment with the SLC/DLCs on or before 30.4.98.
>
> Further the application complete in all respect for claiming subsidy, shall be submitted to the appropriate committee within 90 days from the date of commencement of commercial production, in case of industrial units who have not commenced their commercial production till the date of this notification and within 45 days in case of industrial units, who have commence their commercial production prior to the date of this notification."

According to the learned counsel for the petitioner, it is the underlined portion of the original clause 4(h) which was replaced by the aforesaid newly added proviso. Clause 4(h) as it originally stood defined "New Industrial Units" to mean an industrial unit set up during the operative period of the scheme and the industrial unit will be deemed to have been set up during the operative period of the scheme, if it commences commercial production on or after 1.4.1990 and is found eligible under the scheme. Date of commencement of the commercial production will be the 61st day after the

day on which the raw material is, for the first time, put in the process of production including trial production. The newly added proviso to clause 4(h), however, provided that an eligible industrial unit making investment of at least 25% of the project cost before the closing date of the scheme and starting commercial production within a period of six months after the closing date of the scheme would also be a new industrial unit for the purpose of the scheme, provided such eligible industrial unit gets itself registered with the proof of investment with the SLC/DLCs on or before 30.4.98. This newly added proviso was directed to come into effect from 1.4.97. There can be no manner of doubt that the newly added proviso applied to the case of the petitioner, because the case of the petitioner was considered by DLC in its meeting held on 5.3.2002 much after insertion of the said proviso vide notification dated 3.2.98. While clause 4(h) provides that the date of commencement of the commercial production will be the 61st day after the day on which the

raw material is, for the first time, put in the process of production including trial production, the newly introduced proviso has given an exception to this general rule by providing that an eligible industrial unit making investment of at least 25% of the project cost before the closing date of the scheme and starting commercial production within a period of six months after the closing date of the scheme would also be a new industrial unit for the purpose of the scheme and would be entitled for capital investment subsidy. It is not in dispute that the last date upto which scheme was in force was 31.3.98 and period of 6 months added to this would be 30.9.1998 upto which production was to be started by the petitioner but actually it started the production on 29.9.98, well before the said outer limit. The respondents have taken the sacrosanct date of 30.9.98 as the basis for adding 61st day thereto and on that basis they have come to hold that the commercial production should have been started by the petitioner upto 29.11.98. In doing so,

however, they have not been able to appreciate that the petitioner had actually started making commercial production from 29.9.98. That being the case, the period of 61 days could not be further added over and or above the date on which the commercial production was started by the petitioner. It is not the case of the respondents that the petitioner did not start the commercial production on 29.11.98 as is being asserted by it and it only put the raw material for the first time in the process of production on 29.11.98. In fact, the averments in the reply to writ petition specially in para 2 and ground D clearly show that the respondents also assert that the petitioner started the production on 29.11.98. Obviously, therefore when the production was started on 29.11.98, the raw material was required to be put in the process of of production on an earlier date.

In my considered opinion, therefore, the DLC has not correctly appreciated the provisions of the subsidy scheme

1990 including the newly inserted proviso vide notification dated 3.2.98.

In view of the discussions made above, the present writ petition deserves to be allowed and is accordingly allowed. The decision of the DLC dated 5.3.2002 and consequential order dated 22.3.2002 are set aside and the matter is remanded back for a fresh consideration by DLC in accordance with the provisions of Scheme of 1990. Such consideration should be made and fresh decision be taken within six months from the date certified copy of the judgment placed before the DLC. There shall be no order as to costs.

(Mohammad Rafiq),J.

Chauhan/